



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201102068

OCT 20 2010

Uniform Issue List: 408.03-00

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SE: T: EP: RA: T4

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Account Y = xxxxx

Financial Institution D = xxxxx.

Financial Institution E = xxxxx

Amount N = xxxxx

Amount O = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Dear xxxxx:

This is in response to your submission dated May 20, 2010, as supplemented by correspondence dated July 14 and 19, 2010, in which you request a letter ruling waiving the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 62, represents that she received distribution of Amount N from IRA X on Date 1 from Financial Institution D, and that she intended to roll over a portion of Amount N (Amount O) into an IRA to be established at Financial Institution E. Taxpayer A asserts that, due to an error by Financial Institution E, Amount O was not rolled over timely into another IRA. Taxpayer A further asserts that Amount O has not been used for any purpose and remains deposited with Financial Institution E.

In response to Taxpayer A's request for the distribution of IRA X, Financial Institution D on Date 1 issued to Taxpayer A six checks. The sum of the checks constituted Amount N, the balance of the various subaccounts of IRA X.

Taxpayer A represents that she took the checks on Date 2, which was within 60 days of the distribution of IRA X, to Financial Institution E where she informed an employee of Financial Institution E that she wanted to open an IRA and have Amount O deposited into a money market account. Taxpayer A further represents that the employee informed her on Date 2 that the employee would take care of the matter.

Documentation shows that Account Y, a non-IRA money market account, was established at Financial Institution E on Date 2 and that Amount O was deposited into such account on that date.

It is represented that Taxpayer A relied on Financial Institution E to establish an IRA on Date 2 to receive the rollover of Amount O from IRA X. Taxpayer A did not become aware that Account Y was not an IRA until she received a notice from the Internal Revenue Service two years after the distribution of IRA X from Financial Institution D.

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount O from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of the distribution of Amount O from IRA X was due to error by a financial institution.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount O from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount O into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount O will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose